

selected through the procedures in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are competitive (see 206.102(d)).

(C) Approval requirements for—

(1) Direct health care personal service contracts (see 237.104(b)(ii)(A)(1)) and a pay cap are in DoDI 6025.5, Personal Services Contracting Authority for Direct Health Care Providers. Requests to enter into a personal service contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(2) Services of clinical counselors, family advocacy program staff, and victim's services representatives (see 237.104(b)(ii)(A)(2)), shall be in accordance with agency procedures.

(D) The contracting officer must ensure that the requiring activity provides a copy of the approval with the purchase request.

(E) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice must include the qualification criteria against which individuals responding will be evaluated. The contracting officer shall solicit applicants through at least one local publication which serves the area of the facility. Acquisitions under this section for personal service contracts are exempt from the posting and synopsis requirements of FAR Part 5.

(F) The contracting officer shall provide the qualifications of individuals responding to the notice to the commander of the facility for evaluation and ranking in accordance with agency procedures. Individuals must be considered solely on the basis of the professional qualifications established for the particular personal services being acquired and the Government's estimate of reasonable rates, fees, or other costs. The commander of the facility shall provide the contracting officer with rationale for the ranking of individuals, consistent with the required qualifications.

(G) Upon receipt from the facility of the ranked listing of applicants, the contracting officer shall either—

(1) Enter into negotiations with the highest ranked applicant. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked applicant and enter into negotiations with the next highest.

(2) Enter into negotiations with all qualified applicants and select on the

basis of qualifications and rates, fees, or other costs.

(H) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(I) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

* * * * *

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 265]

Organization and Delegation of Powers and Duties Delegations to the Director of the Departmental Office of Civil Rights

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This document contains a delegation of authority to the Director of the Departmental Office of Civil Rights (DOCR) to conduct all stages of the Department's formal internal discrimination complaint process and to provide policy guidance concerning the implementation and enforcement of all civil rights laws, regulations and executive orders for which the Department of Transportation (DOT or the Department) is responsible. This document also amends the delegation of authority to DOT Administrators relating to internal civil rights functions since, with the exception of certain responsibilities related to the resolution of informal complaints of discrimination within DOT operating administrations, these functions are being transferred to the Director of DOCR. There are no substantive changes to the DOCR's functions with respect to the Department's external civil rights programs. The language changes dealing with external programs are only designed to more clearly state existing authority and practice.

EFFECTIVE DATE: This rule becomes effective on January 12, 1995.

FOR FURTHER INFORMATION CONTACT: Debra J. Rosen, Office of the Assistant

General Counsel for Environmental, Civil Rights and General Law at (202) 366-9167 or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement at (202) 366-9306, Department of Transportation, 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Consistent with a provision in the Department of Transportation and Related Agencies Appropriations Act, 1995, Public Law 103-331, the Secretary of Transportation approved the consolidation of internal civil rights functions within the Department. Under the consolidation plan, all functions relating to the processing of formal administrative complaints of employment discrimination filed by Department employees and applicants for federal employment with the Department are assigned to the DOCR. Thus, it is necessary to amend the relevant parts of the CFR to reflect these new authorities.

49 CFR Part 1 describes the organization of DOT and provides for the performance of duties imposed upon, and the exercise of powers vested in, the Secretary of Transportation by law. Section 1.23 describes the spheres of primary responsibility within DOT and is being revised to reflect the new responsibilities assigned to the DOCR and to clarify the DOCR's existing responsibilities. Amended section 1.23 states that the DOCR is responsible for conducting all stages of the formal internal discrimination complaint process. In addition, the DOCR is responsible for providing policy guidance within the Department concerning the implementation and enforcement of all civil rights laws, regulations and executive orders for which the Department is responsible, and for reviewing and evaluating the civil rights programs of the Department's operating administrations (OAs). Finally, amended section 1.23 states that the Director of the DOCR serves as the Department's Equal Employment Opportunity Officer and Title VI Coordinator.

Currently, section 1.45(a)(10) delegates authority to the Administrators of the DOT operating administrations to accept or reject internal complaints of discrimination by their respective employees and applicants for employment on the basis of race, color, religion, sex, national origin, or age arising within their organizations. Under the consolidation, the OAs (including the Coast Guard) will retain responsibility for resolving informal complaints of discrimination

arising within their organizations as well as for developing and implementing affirmative action and diversity plans within their organizations, but will no longer be involved once a complaint reaches the formal process. Each Administrator and the Assistant Secretary for Administration, in the case of the Office of the Secretary, retains his/her existing responsibilities for appointing Equal Opportunity Counselors within his/her organization and assuring that the Equal Opportunity Counseling program is carried out in an effective manner. This paragraph is amended to reflect the OA's revised responsibilities. OAs will also retain their current responsibility for representing management during the various stages of the formal internal complaint process. Similarly, language has been added to section 1.54 delegating authority to Secretarial Officers (including the Inspector General) to resolve informal complaints of discrimination arising within their respective organizations and develop and implement affirmative action and diversity plans within their respective organizations.

Section 1.59 currently delegates authority to the Assistant Secretary for Administration to carry out a number of civil rights responsibilities. These authorities are: development and implementation of an affirmative action plan in the Office of the Secretary to assure equal employment opportunity (section 1.59(b)(2)); reviewing proposals of the Office of the Secretary for each new appointment or transfer to assure compliance with the Action Plan for Equal Opportunity for the Office of the Secretary (section 1.59(b)(5)(ii)); and acceptance or rejection of internal complaints of discrimination on the basis of race, color, religion, sex, national origin, or age arising within or relating to the Office of the Secretary (section 1.59(j)). Since, as described above, this rulemaking delegates authority to each Secretarial Officer to develop and implement affirmative action and diversity plans within their respective organizations, sections 1.59(b)(2) and 1.59(b)(5)(ii) are no longer needed and these delegations are hereby withdrawn. Similarly, as described above, DOOCR is now responsible for conducting all stages of the formal internal complaint process, the delegation to the Assistant Secretary for Administration concerning the acceptance or rejection of internal complaints of discrimination is hereby revoked.

This rulemaking adds new section 1.70 to 49 CFR Part 1, delegating to the Director of the DOOCR the authority to

conduct all stages of the Department's formal internal discrimination complaint process and confirming the DOOCR's long-standing responsibility to provide policy guidance concerning the implementation and enforcement of all civil rights laws, regulations and executive orders for which the Department is responsible, to otherwise perform activities to ensure compliance with external civil rights programs, and to review and evaluate their implementation.

The Department's external civil rights programs are largely carried out by the operating administrations, under the general policy guidance of the DOOCR. Also, the Departmental Office of Small and Disadvantaged Business Utilization provides primary policy direction for the Department's minority and disadvantaged business enterprise (DBE) program. Thus, this rule emphasizes that the DOOCR is to work cooperatively with the OAs and other Department components in developing guidance and otherwise carrying out its responsibilities for these external civil rights programs in accordance with statutes, regulations, and executive orders of general applicability and DOT-specific statutes administered by these organizations.

The applicable laws covered by the delegation to the DOOCR are numerous and are listed in the delegation. In addition to well recognized civil rights laws such as Titles VI and VII of the Civil Rights Act of 1964, as amended, the delegation covers such laws as the Alcohol, Drug Abuse and Mental Health Administration Reorganization Act, 42 U.S.C. 290dd(b), which provides that no person is to be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the grounds of prior substance abuse, except as otherwise provided; the Equal Pay Act of 1963, which prohibits employers with employees subject to the Fair Labor Standards Act from discriminating against these employees on the basis of sex in the payment of wages; The Department of Transportation Coast Guard Military Justice Manual, CG-488, Part 700-9, which authorizes members of the Coast Guard to file EEO complaints of discrimination; and the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 471 and 476, which provide that no individual shall be subjected to sexual discrimination under any program or activity receiving Federal funds under the Act.

The delegation also covers the following DOT-specific statutes which are administered by the OAs. While the

OAs will continue to administer their respective statutes, including authorities specifically delegated to Administrators pursuant to regulation or DOT Order, the DOOCR retains its long-standing authority to provide policy guidance to the OAs concerning the implementation and enforcement of these statutes and to review and evaluate the OAs' programs under these statutes: 49 U.S.C. 47113 and 47123 (formerly section 505(f), 511(a)(17), and 520 of the Airport and Airway Improvement Act of 1982, as amended), which concern nondiscrimination and minority and DBE participation in projects funded under chapter 471 of title 49, United States Code; 49 U.S.C. 47107(e) (formerly sections 511(a)(17) and 511(h) of the Airport and Airway Improvement Act of 1982, as amended), which concerns DBE participation in airport concessions pursuant to an agreement with a sponsor that has received a grant for airport development under chapter 471 of title 49, United States Code; 49 U.S.C. 41705 (formerly the Air Carrier Access Act of 1986, as amended), which prohibits discrimination by an air carrier against any otherwise qualified handicapped individual by reason of such handicap; 49 U.S.C. 5310 (formerly section 16 of the Federal Transit Act, as amended), which concerns planning and design of mass transportation facilities to meet special needs of elderly persons and persons with disabilities; 49 U.S.C. 5332 (formerly section 19 of the Federal Transit Act, as amended), which concerns nondiscrimination in programs or activities receiving financial assistance under chapter 53 of title 49, United States Code; the Federal-Aid Highway Act, as amended, 23 U.S.C. 140 and 324, which concern nondiscrimination in Federally funded highway programs; the Highway Safety Act of 1966, as amended, 23 U.S.C. 402(b)(1)(D), which concerns access for physically handicapped persons at pedestrian crosswalks in state highway safety programs; 49 U.S.C. 306, which prohibits discrimination under any program, project or activity receiving financial assistance under certain provisions of the Regional Rail Reorganization Act of 1973 or the Railroad Revitalization and Regulatory Reform Act of 1976; and the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, 105 Stat. 1919, section 1003, which authorizes the DBE program for surface transportation programs.

Since this rule relates to departmental management, organization, procedure, and practice, notice and public

comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, this rule is effective on the date of its publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies) Organization and functions (Government agencies).

In consideration of the foregoing, and under the authority of 49 U.S.C. 322, Part 1 of Title 49 Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101-552; 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2).

2. 49 CFR Subtitle A is amended as follows:

a. Section 1.23 is amended by revising paragraph (l) to read as follows:

§ 1.23 Spheres of primary responsibility.

(l) *Departmental Office of Civil Rights.* The Director of the Departmental Office of Civil Rights serves as the Department's Equal Employment Opportunity (EEO) Officer and Title VI Coordinator. The Director also serves as principal advisor to the Secretary and the Deputy Secretary on the civil rights and nondiscrimination statutes, regulations, and executive orders applicable to the Department, including titles VI and VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Age Discrimination Act of 1975, as amended, section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, and the Equal Pay Act of 1963. The Office of Civil Rights also provides policy guidance to the operating administrations and Secretarial officers on these matters. Also, the Office periodically reviews and evaluates the civil rights programs of the operating administrations to ensure that recipients of DOT funds meet applicable Federal civil rights requirements.

b. Section 1.45 is amended by revising paragraph (a)(10) to read as follows:

§ 1.45 Delegations to all Administrators.

(10) Exercise the authority of the Secretary to resolve informal allegations of discrimination arising in or relating to their respective organizations through

Equal Employment Opportunity counseling or the Alternative Dispute Resolution process and to develop and implement affirmative action and diversity plans within their respective organizations. With regard to external civil rights programs, each Administrator exercises authority pursuant to statutes, regulations, executive orders, or delegations in subpart C of this Part to carry out these programs, under the general policy guidance of the Director of the Departmental Office of Civil Rights, including conducting compliance reviews and other activities relating to the enforcement of these statutes, regulations, and executive orders.

* * * * *

c. Section 1.54 is amended by adding a new paragraph (b)(11) to read as follows:

§ 1.54 Delegations to all Secretarial Officers.

* * * * *

(b)* * *
(11) Exercise the authority of the Secretary to resolve informal allegations of discrimination arising in or relating to their respective organizations through Equal Employment Opportunity counseling or the Alternative Dispute Resolution process and to develop and implement affirmative action and diversity plans within their respective organizations.

d. Section 1.59 is amended as follows:

1. Paragraph (b)(2) is removed and paragraphs (b) (3) through (9) are redesignated as paragraphs (b) (2) through (8) respectively.

2. Redesignated paragraph (b)(4)(ii) is removed and reserved.

3. Paragraph (j) is removed and paragraph (k) through (q) are redesignated as (j) through (p), respectively.

e. A new § 1.70 is added to read as follows:

§ 1.70 Delegations to the Director of the Departmental Office of Civil Rights.

The Director of the Departmental Office of Civil Rights is delegated authority to conduct all stages of the formal internal discrimination complaint process (including the acceptance or rejection of complaints); to provide policy guidance to the operating administrations and Secretarial officers concerning the implementation and enforcement of all civil rights laws, regulations and executive orders for which the Department is responsible; to otherwise perform activities to ensure compliance with external civil rights programs; and to review and evaluate the operating

administrations' enforcement of these authorities.

These authorities include:

(a) Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. 2000e *et seq.*

(b) Title VI of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. 2000d *et seq.*

(c) Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. 794 and 794a.

(d) Section 501 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. 791.

(e) Age Discrimination in Employment Act of 1967, *as amended*, 29 U.S.C. 621 *et seq.*

(f) Age Discrimination Act of 1975, *as amended*, 42 U.S.C. 6101.

(g) Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified at 42 U.S.C. 12101-121213).

(h) Equal Pay Act of 1963 (enacted as section 6(d) of the Fair Labor Standards Act of 1938, 29 U.S.C. 206(d)).

(i) Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, 42 U.S.C. 290dd(b).

(j) 29 CFR Parts 1600 through 1691 (Equal Employment Opportunity Commission Regulations).

(k) Department of Transportation Coast Guard Military Justice Manual, CG-488, Part 700-9 (Civil Rights Complaints).

(l) Title VIII of the Civil Rights Act of 1968, *as amended*, 42 U.S.C. 3601 *et seq.* (fair housing provisions).

(m) The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 476.

(n) Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681.

(o) Executive Order No. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations. (In coordination with the Assistant Secretary for Transportation Policy.)

(p) 49 U.S.C. 47113, 47107, and 47123 (formerly sections 505(f), 511(a)(17), and 520 of the Airport and Airway Improvement Act of 1982, *as amended*).

(q) 49 U.S.C. 41705 (formerly the Air Carrier Access Act of 1986, *as amended*).

(r) The Federal-Aid Highway Act, *as amended*, 23 U.S.C. 140 and 324.

(s) 49 U.S.C. 306.

(t) 49 U.S.C. 5310, 5332 (formerly sections 16 and 19 of the Federal Transit Act, *as amended*).

(u) The Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, 105 Stat. 1919, section 1003.

(v) The Highway Safety Act of 1966, as amended, 23 U.S.C. 402(b)(1)(D).

Issued at Washington, DC this 5th day of January 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95-753 Filed 1-11-95; 8:45 am]

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National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93-54, Notice 2]

RIN 2127-AE54

Federal Motor Vehicle Safety Standards; Air Brake Systems; Long-Stroke Brake Chambers

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: Consistent with a recommendation by the National Transportation Safety Board and in response to a petition for rulemaking from the American Trucking Associations (ATA), this final rule amends the reservoir requirements in Standard No. 121, *Air Brake Systems*, for trucks, buses, and trailers equipped with air brakes. The agency believes that the amendments will improve the braking efficiency of such vehicles and reduce the number of brakes found to be out of adjustment during inspections. It will do this by removing a design restriction that tends to discourage the use of long-stroke brake chambers, a technology with potentially significant safety benefits.

DATES: *Effective Date:* The amendments become effective on February 13, 1995.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than February 13, 1995.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 93-54; Notice 2 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-366-5274).

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 121, *Air Brake Systems*, specifies performance requirements applicable to vehicles equipped with air brakes. The Standard also requires air-braked vehicles to be equipped with various types of equipment, including an air compressor, reservoirs, and a pressure gauge. (See section S5.1) Standard No. 121 does not specify the length of stroke of brake chambers, but it establishes a ratio between the volume of the service reservoirs and the volume of the brake chambers. The reservoirs store energy, in the form of air at high pressure that is used to apply the vehicle's brakes. Without such reservoirs, the vehicle's air compressor could not maintain adequate brake system pressure during successive rapid brake applications. The effect of this ratio is that if the brake chamber stroke is lengthened, thereby increasing its volume, it may be necessary to enlarge the service reservoirs.

With respect to trucks and buses, Section S5.1.2.1 currently specifies that

The combined volume of all service reservoirs and supply reservoirs shall be at least 12 times the combined volume of all service brake chambers at maximum travel of pistons or diaphragms. However, the reservoirs on the truck portion of an auto transporter need not meet this requirement.

Similarly, with respect to trailers, section S5.2.1.1 specifies

The total volume of each service reservoir shall be at least eight times the combined volume of all service brake chambers serviced by that reservoir at the maximum travel of the pistons or diaphragms of those service brake chambers. However, the reservoirs on a heavy hauler trailer and on the trailer portion of an auto transporter need not meet the requirements specified in S5.2.1.1.

These provisions were intended to ensure that a vehicle's braking system has sufficient compressed air to provide adequate brake pressure after a number of brake applications.

Brake chambers with longer strokes are commonly known as "long-stroke" chambers, in reference to the longer piston or pushrod travel that they require. Reports¹ by NHTSA and the National Transportation Safety Board (NTSB) have indicated that long stroke chambers can help improve brake adjustment on heavy vehicles. However, the reports also note that the reservoir requirements in Standard No. 121

¹ *Automatic Slack Adjusters for Heavy Vehicle Brake Systems*, February 1991, DOT HS 724, and the National Transportation Safety Board *Heavy Vehicle Airbrake Performance*, 1992, PB92-917003/NTSB/SS-92/01

would necessitate much larger reservoirs when long-stroke chambers are used. Thus, while the current requirements do not prohibit long-stroke chambers, the requirements for reservoir size significantly discourage their use.

II. Petition

On March 17, 1992, the American Trucking Associations (ATA) petitioned the agency to amend the reservoir requirements in Standard No. 121 to facilitate the installation of long-stroke chambers. With respect to trucks, buses, and trailers equipped with long-stroke chambers, ATA recommended that the combined volume of all the reservoirs be based on the "rated volume" of the service brake chambers, rather than on the volume of the chambers at the maximum travel of the piston. The "rated volume" of each brake chamber would be determined pursuant to a table of specified values according to the area of the brake diaphragm and the length of the stroke. In other words, under ATA's recommended amendment, if a "type 30" brake chamber (with a diaphragm of approximately 30 square inches) had a full stroke of at least 2.50 inches, then the rated volume of the brake chamber would have to be at least 84 cubic inches. As a practical matter, the use of long stroke chambers should have a minimal effect on reservoir capacity. For other types of brake chambers not presented on the table, the rated volume would be the volume of the brake chamber at maximum travel of the brake pistons or pushrods.

In support of its petition, ATA argued that manufacturers would have to incur unnecessary costs associated with increasing the size of the reservoirs if standard brake chambers were replaced with long-stroke chambers. Along with these additional costs, some vehicle configurations would have to be redesigned due to lack of adequate locations with sufficient space to accommodate large reservoirs. The lack of space is especially significant with short wheel base single unit trucks equipped with extensive accessories (e.g., power-take-off units (PTOs), tail gate lifts, refrigeration units, larger brakes) which compete for undercarriage space.

III. Notice of Proposed Rulemaking

On August 2, 1993, NHTSA proposed amending Standard No. 121's reservoir requirements for trucks, buses, and trailers to facilitate the introduction of long-stroke brake chambers. (58 FR 41078). Specifically, the agency proposed that the method for calculating air reservoir requirements would be based on the "rated volume"